

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BASCIANI FOODS, INC and
ANDREW & WILLIAMSON SALES CO., INC.

Plaintiffs,

GLOBAL TROPICAL FRESH FRUIT CORP.,
TAYLOR FARMS CALIFORNIA, INC.,
POTANDON PRODUCE, LLC, STEINBECK
COUNTRY PRODUCE, INC., and
TAYLOR FARMS MARYLAND, INC.,

Intervening Plaintiffs,

v.

MID ISLAND WHOLESALE FRUIT AND
PRODUCE, INC., HOWARD GREISSMAN,
DAVID M. FLESCHER, and
MANUFACTURERS AND TRADERS TRUST
COMPANY d/b/a/ M&T BANK
CORPORATION,

Defendants.

Civil No. 2:09-cv-4585-JS-WDW

**STIPULATION AND ORDER
OF PARTIAL SETTLEMENT**

PARTIAL SETTLEMENT STIPULATION (this "Stipulation") entered into as of March 4, 2012, by and among Plaintiffs, Basciani Foods, Inc. and Andrew & Williamson Sales Co., Inc., (collectively, "Plaintiffs"), Intervening Plaintiffs Global Tropical Fresh Fruit Corp., Taylor Farms California, Inc., Potandon Produce, LLC, Steinbeck Country Produce, Inc., and Taylor Farms Maryland, Inc. (collectively, "Intervening Plaintiffs") and Defendant Manufacturers and Traders Trust Company d/b/a M&T Bank Corporation ("M&T Bank").

1. All parties to this Stipulation acknowledge that Plaintiffs and Intervening Plaintiffs hold claims against Defendant Mid-Island Wholesale Fruit & Produce, Inc. ("Mid-Island") arising pursuant to the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e(c) ("PACA").

2. Plaintiffs and Intervening Plaintiffs timely filed amended complaints and second amended complaints in this action (docket nos. 18, 34, 43, 45, 92 and 93) alleging that defendant M&T Bank, in contravention of the statute, is in possession of property constituting assets of a trust created by PACA arising from the sale of perishable agricultural commodities by said Plaintiffs and Intervening Plaintiffs to Mid-Island.

3. M&T Bank timely filed Answers to each of the aforesaid amended complaints and second amended complaints denying the allegations of liability contained in said amended complaints and second amended complaints, and asserting cross-claims for affirmative relief against Defendants Mid-Island and Howard Griessman.

4. Plaintiffs and Intervening Plaintiffs agree to dismiss their claims against M&T Bank with prejudice in exchange for the payment of the sum of \$75,000.00 (the "Settlement Funds").

5. The Settlement Funds shall be divided among Plaintiffs and Intervening Plaintiffs according to the pro-rata share of their aggregate claim against Defendants. Annexed hereto as Schedule A is a complete list of each Plaintiff's and Intervening Plaintiff's principal amount owed, its pro-rata percentage of the total claim, and the pro-rata portion of the amount to be paid to each. Bruce Levinson, Esq., Plaintiffs' counsel, is authorized to and shall distribute the Settlement Funds to the Plaintiffs and Intervening Plaintiffs according to their entitlement as set forth in Schedule A.

6. M&T Bank shall pay the Settlement Funds by bank check payable to Bruce Levinson, Esq., as attorney, and such payment shall be delivered to The Law Offices of Bruce Levinson at 747 Third Avenue, Fourth Floor, New York, NY 10017-2803 on or before 5:00 pm on April 1, 2012. TIME BEING OF THE ESSENCE. Defendants shall not be entitled to any cure period if they default under this Stipulation.

7. If there shall occur any breach of this Stipulation by M&T Bank or by Plaintiffs and Intervening Plaintiffs, and if any suit or motion or action is filed or instituted to enforce the provisions of this Stipulation, then the prevailing party shall be entitled to recover from the other parties reasonable attorneys' fees and court costs which arise therefrom.

8. Any and all claims, whether known or unknown, which have been or which could have been asserted against M&T Bank in this or any other action based upon or including an allegation that M&T Bank had received or is in possession of property constituting assets of a trust created by PACA arising from the sale of perishable agricultural commodities by any person or party or entity (including but not limited to the Plaintiffs and Intervening Plaintiffs) to Mid-Island (a "PACA Trust Claim"), shall be and hereby are discharged in law and in fact and forever barred in this or any other court. Without limitation of the foregoing, any person or party or entity who has received notice of the joint motion to this Court seeking approval of this Stipulation: (a) shall be forever barred and enjoined from commencing or continuing any action or proceeding seeking to enforce against M&T Bank any PACA Trust Claim or any other equitable or other type of claim arising from the sale of perishable agricultural commodities to Mid-Island, and (b) shall be deemed to have consented and agreed to this Stipulation and joint motion if he/she/it has not filed a timely objection to said joint motion.

9. The cross-claims and counter-claims asserted by Defendant M&T Bank as against the Plaintiffs and Intervening Plaintiffs and as against Defendants Mid-Island and Greissman shall be discontinued without prejudice. Defendant M&T Bank shall be and hereby is severed and dismissed as a party to this action.

10. This Stipulation constitutes the entire understanding of Plaintiffs, Intervening Plaintiffs, and M&T Bank concerning the subject matter hereof and may not be changed or terminated except by a writing signed by all parties hereto. This Stipulation shall be deemed to

have been drafted by all parties to this agreement. Faxed or scanned signatures on this Stipulation shall be deemed originals for all purposes. This Stipulation shall be binding upon its full execution by the parties hereto, and upon entry of a binding, non-appealable order of this Court approving same.

Dated this 11th day of March, 2012.

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*Attorney for Intervening Plaintiff Taylor
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NOW, upon motion of the Plaintiffs and Intervening Plaintiffs and of Defendant
Manufacturers and Traders Trust Company, the foregoing Partial Settlement Stipulation shall be
and hereby is SO ORDERED.

Dated: Central Islip, New York
March ____, 2012

Hon. Joanna Seybert, U.S.D.C.

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